IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No.2003 of 2002
Date of decision: August 8, 2007.

Nirmal Singh

...**Petitioner(s)**

v.

State of Punjab & Anr.

...**Respondent(s)**

CORAM:HON'BLE MR. JUSTICE SURYA KANT

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest.

Present: Shri R.S. Bains, Advocate for the petitioner.

Shri Rajesh Bhardwaj, Deputy Advocate General, Punjab.

Shri H.S. Gill, Senior Advocate, with
Shri Vivek Goel, Advocate, for respondent No.2.

ORDER

Surya Kant, J. This order shall dispose of Crl. Revision No.2003 of 2002 and Crl. Revision No.261 of 2006 as both the cases have originated out of same incident.

The petitioner in the first petition along with his co-accused is facing trial in a murder case arising out of FIR No.79 dated 25.7.1997, under section 302, 307, 148, 149 IPC and Section 25, 27 of the Arms Act, registered at Police Station: Sadar, Moga. He is aggrieved at the order dated 12.8.2002 passed by the learned trial court whereby an application moved by the complainant – Sukhdev Singh not to hold further investigation into the case by the police, has been "declined".

The petitioner in the second revision petition is also facing trial in the case under section 302 IPC and he is the father of the petitioner in the

first petition.

The facts may be briefly noticed.

On a statement made by Sukhdev Singh, Sarpanch of village Mangewal, FIR No.79 dated 25.7.1997, under section 302, 307, 148, 149 IPC and Section 25, 27 of the Arms Act, was registered at Police Station: Sadar, Moga, *inter-alia*, alleging that when the said Sarpanch, along with his son Jagsir Singh, Sadhu Singh son of Kundha Singh, was travelling in his Sumo jeep and reached near the house of Gurbachan Singh, they were fired upon by Nirmal Singh, Darshan Singh and Tarsem Singh who were having 12 bore guns in their hands. It was alleged that Gurbacharan Singh also fired towards the complainant from his 3.15 bore rifle which hit Shamsher Singh in the chest on his left side and as a result of the gun shot injury, Shamsher Singh, who was driving the jeep, could not control the same which hit the heap of muck. Thereafter, the complainant along with his son Jagsir Singh allegedly took Shamsher Singh in an unconscious condition to Civil Hospital, Moga where the injured succumbed to his injuries.

Investigation was held and on the basis of report under section 173 Cr.P.C., the petitioner along with his father and other co-accused were charged for committing the above stated murder.

Meanwhile, it appears that the petitioner and his father etc. made a representation to the higher police authorities for re-investigation of the case. The matter was re-investigated by SP (Hq), Moga who is stated to have submitted a report holding that it was the complainant party which had in fact committed murder of Shamsher Singh and not the petitioners or their co-accused who are facing trial for the said offence. The report of SP (Hq) was approved by IGP, Zone-I, Punjab also.

Acting upon the above stated re-investigation report, a challan was presented against the complainant party by the SSP, Moga, however, under section 336 IPC only after observing that the gun shot was fired by them in the air and not aiming at someone with an intention to commit the murder.

The matter, however, did not end here. The police authorities kept on adding more and more confusion, inasmuch as yet another report

was prepared by one Bhushan Kumar Garg, the then SSP, Moga, who wrote to the IGP, Zone-I, Punjab stating that the murder was committed allegedly by the petitioner and his co-accused only.

The above noticed reports/counter-reports, led the SHO, P.S. Sadar, Moga to move an application before the learned trial court to permit him to conduct further investigation. It appears that the said application was allowed by the learned trial court.

However, to prevent further investigation/re-investigation in terms of the order referred to above, the complainant moved an application (Annexure P-7) whereby in a way the order directing re-investigation of the case was sought to be recalled and a prayer was made to direct the police authorities not to hold further investigation into the case. The said application led to passing of the impugned order dated 12.8.2002 by the learned trial court.

Meanwhile, notwithstanding the fact that this court had restrained the trial court from passing final order in the cross/parallel case registered against the complainant party under section 336 IPC and a direction had also been issued to dispose of the above stated two cases together, the case under section 336 IPC has been decided by the learned Additional Sessions Judge (Ad hoc), Fast Tract, Muktsar whereby the accused person in that case, i.e., the complainant party in the main case, have been acquitted.

The above stated order of acquittal of the complainant party is made challenge in the second revision petition.

I have heard Learned Counsel for the parties and perused the various orders/documents on record. The order dated May 8, 2006 passed by this Court in Crl. Misc. No.45553 of 2004 in Crl. Misc. No.5913-M of 2000, as relied upon by Learned Counsel for the Petitioner, has also been perused. There can be no doubt that the police authorities, and that too the senior ranking police officers, have done their best to mess up the whole case, apparently to favour one or the other party. At the same time, it is neither desirable nor expedient for this court to make any observations on the veracity of more than one reports submitted by the police authorities, referred to above. The correctness of these reports, in the light of the

evidence led by the prosecution or the defence, can be gone into by the learned trial court only. It is stated by Learned Counsel for the Petitioners that the subsequent police reports are already placed on record by them in defence evidence and Mr. S.K. Asthana, the then SP (Hq), Moga, has also deposed as a defence witness. In these circumstances, the only appropriate course left for this court at this stage is to direct the learned trial court to conclude the trial proceedings with liberty to the parties to refer to and rely upon the above stated reports. I order accordingly.

Learned Counsel for the Petitioners, however, appears to be right in contending that the acquittal of the complainant, namely, Sukhdev Singh in the case under section 336 IPC by the learned trial court, even when there was a direction by this Court to club and decide both the cases together, may prejudice the petitioner's case in the pending trial under section 302 IPC.

At this stage, it will be apposite to reproduce one of the *zimni* order dated 15.11.2002 passed by the learned trial court, which reads as follows:-

> "*As per order of the Hon'ble High Court, bearing No.23461 Gazette II IX.G dated 31.07.2002, duly informed to this Court by ld. District and Sessions Judge, Faridkot, vide Endst. No.7207 dated 05.08.2002 this case has been withdrawn from the files of this court and is ordered to be sent to the Fast Tract Court Faridkot for trial along with case titled as State V. Gurbachan Singh etc. as FIR is same. Consequently, in compliance of order of Hon'ble High Court and duly informed to this Court by ld. District and Sessions Judge, Faridkot vide Endst. Dated 05.08.2002, this case is ordered to be sent to the Fast Track Court Faridkot for trial for 02.09.2002. Ahlmad is directed to send the file to that court immediately complete in all respects."*

In the light of the above stated order, it was imperative upon the learned trial court to await and decide the trial case under section 336 IPC along with the case under section 302 IPC only.

Consequently, and without going into merits of the order

passed by the learned trial court so that no prejudice is caused to either of the parties, the impugned order dated 22.12.2004 is set aside. As a necessary corollary thereof, the learned trial court is directed to decide both the cases together in accordance with law.

The parties are directed to appear before the learned trial court on **20.9.2007**.

Disposed of.

August 08, 2007. [**Surya Kant**]
kadyan **Judge**